

Message

From: Louis Karagias [Louis.Karagias@law.njoag.gov]
Sent: 3/3/2020 10:11:14 PM
To: Carrera, Lindsay [carrera.lindsay@epa.gov]; James P. Bruno [jbruno@cq-law.com]; 'Mayor Alberto Santos' [mayor@kearnynj.org]; Baxter, Pamela [baxter.Pamela@epa.gov]; Oconnell, Kimberly [OConnell.Kim@epa.gov]; Mellott, Deborah [Mellott.Deborah@epa.gov]; Zizila, Frances [Zizila.Frances@epa.gov]; Putnam, Ed [ed.putnam@dep.nj.gov]; kevin.kratina@dep.nj.gov; Haymes, David [David.Haymes@dep.nj.gov]; frank.defeo@dep.nj.gov; O'Neill, Tom [Tom.O'Neill@dep.nj.gov]; susan@mccurrielaw.com
Subject: RE: On Behalf of Frances Zizila

All:

The DEP is not inclined to accept EPA's counterproposal for three reasons. First, the DEP's allocation percentage for the first \$18 million has been reduced from 15% to 12%. The town's allocation percentage remains the same at 15% and EPA's allocation percentage is increased from 70% to 73%. Thus, while one party's allocation percentage remains the same and another party's allocation percentage is increased, the DEP is the only party with an allocation percentage reduction.

Second, the DEP does not receive anything for the first \$3.33 million of surplus funds over \$18 million. The EPA and the town would split equally the \$3.33 million of surplus funds. Under this tiered approach, DEP's allocation percentage is zero for the \$3.33 million of surplus funds, which we regard as unfair.

Third, DEP's proposed O&M provisions have been completely eliminated even though it could be years between the execution of an MOA and title transfer to a redeveloper. DEP will continue to incur O&M costs during this time, costs that EPA has chosen to ignore in this latest offer. All the participants' past costs and future costs, except DEP's future costs, are being taken into account. It is patently unfair that DEP's future costs are being completely removed from this negotiation and for no valid reason. Regarding future costs, EPA's counterproposal makes provisions for the town to recover their future documented foreclosure and designated redevelopment area costs, which DEP believes is fair to include. However, there are no provisions in the counterproposal for DEP's future costs.

The elimination of DEP's proposed O&M costs provisions, a reduction in DEP's allocation percentage for the first \$18 million, and the fact that DEP does not share in any sale proceeds for the \$3.33 million in surplus funds over \$18 million, has the potential of significantly increasing DEP's burden in the counterproposal's allocation methodology. But the other parties in this counterproposal are coming out ahead at DEP's expense. As DEP previously commented, reimbursing the DEP for its O&M costs going forward is an incentive for all parties to work quickly and cooperatively to transfer this property to a developer. The more quickly this happens, the more money will be available for allocation using an agreed upon formula.

With all of that said, the DEP still wishes to amicably reach a deal to get this property redeveloped and put back on the tax rolls. The DEP does not want to hold up a deal, but it must consider its interests too. DEP officials will be meeting later this week to discuss this matter further, but we wanted to provide you with preliminary feedback on this counterproposal prior to the conference call this Friday.

Lou

Louis G. Karagias, DAG
Office of the Attorney General
Environmental Enforcement and
Environmental Justice Section
25 Market Street
P.O. Box 093
7th Floor, West Wing

Trenton, N.J. 08625

Tel. (609) 376-2735

Main No. (609) 376-2740 (Environmental Enforcement)

Fax (609) 341-5030

Email: Louis.Karagias@law.njoag.gov

From: Carrera, Lindsay <carrera.lindsay@epa.gov>

Sent: Monday, March 2, 2020 11:20 AM

To: James P. Bruno <jbruno@cq-law.com>; 'Mayor Alberto Santos' <mayor@kearnynj.org>; Louis Karagias <Louis.Karagias@law.njoag.gov>; Baxter, Pamela <baxter.Pamela@epa.gov>; Oconnell, Kimberly <OConnell.Kim@epa.gov>; Mellott, Deborah <Mellott.Deborah@epa.gov>; Zizila, Frances <Zizila.Frances@epa.gov>; Putnam, Ed <ed.putnam@dep.nj.gov>; kevin.kratina@dep.nj.gov; Haymes, David <David.Haymes@dep.nj.gov>; frank.defeo@dep.nj.gov; O'Neill, Tom <Tom.O'Neill@dep.nj.gov>; susan@mccurrielaw.com

Subject: [EXTERNAL] On Behalf of Frances Zizila

All:

EPA has considered the DEP's and the Town's counterproposals conveyed to the parties on February 5th and February 11th, respectively. In the interest of promoting redevelopment at Superfund sites and recognizing the complex legal issues presented by the abandoned property and the encumbrances thereon, EPA is prepared to make the following final settlement offer with the intent of proceeding to the Memorandum of Agreement ("MOA") stage immediately, if accepted by the parties. EPA management has reviewed and been briefed on this settlement methodology, and has indicated its support. Any final MOA is subject to the approval of EPA officials with the delegated authority to enter into the MOA. The terms of the agreement proposed are as follows:

- 1) Up to the first \$18M in net proceeds, the proceeds will be allocated among the parties as follows: 15% to the Town; 12% to DEP; and 73% to EPA.
- 2) Documented costs incurred by the Town for the foreclosure and designation of the property as a redevelopment area would be reimbursed to the Town before any allocation of sale proceeds.
- 3) Any net proceeds over \$18M will be subject to the following tiered approach:
 - (a) the first \$3.33M of surplus funds will be split equally between the USEPA and the Town.
 - (b) Any surplus funds over \$3.33M would be allocated as follows: 25% to the Town; 25% to DEP; and 50% to EPA.
- 4) DEP will continue to fund and perform the O&M for the OU1 remedy during the interim time period between the execution of the MOA and the sale of the site to a redeveloper following the Town's foreclosure. DEP will enter into an Administrative Consent Order with the new property owner under which the new owner would commit to perform the O&M for the OU1 remedy going forward.

This settlement offer increases the allocation percentages for the Town and DEP by 50% respectively and reflects a significant compromise from EPA's initial offer. Elements from both the DEP and the Town's counterproposals have been incorporated. In EPA's view, this settlement offer presents a reasonable resolution of this matter, achieves an equitable balance among the parties considering the issues EPA raised in support of its initial proposal, and would enable the property to be sold and put back into productive use.

We look forward to our meeting on March 6th.

Sincerely,

Frances M. Zizila
Assistant Regional Counsel
EPA Region 2

From: James P. Bruno <jbruno@cq-law.com>
Sent: Tuesday, February 11, 2020 3:51 PM
To: 'Mayor Alberto Santos' <mayor@kearnynj.org>; Louis Karagias <Louis.Karagias@law.njoag.gov>; Carrera, Lindsay <carrera.lindsay@epa.gov>; Baxter, Pamela <baxter.Pamela@epa.gov>; Oconnell, Kimberly <OConnell.Kim@epa.gov>; Mellott, Deborah <Mellott.Deborah@epa.gov>; Zizila, Frances <Zizila.Frances@epa.gov>; Putnam, Ed <ed.putnam@dep.nj.gov>; kevin.kratina@dep.nj.gov; Haymes, David <David.Haymes@dep.nj.gov>; frank.defeo@dep.nj.gov; O'Neill, Tom <Tom.O'Neill@dep.nj.gov>; susan@mccurrielaw.com
Subject: RE: Syncon Resins Call---FOR DISCUSSION PURPOSES ONLY

All:

Shortly after receiving the NJDEP counterproposal, the Mayor responded (see email below) that the Town should recover a larger share if there are "surplus" funds (i.e. if the sale generates over \$18M in net proceeds.)

Pursuant to a subsequent request, here is a more detailed response to the NJDEP counterproposal.

- 1) The Town would agree to accept 15% up to the first \$18M in net sale proceeds as set forth in NJDEP counterproposal
- 2) The Town will designate the area as a redevelopment area, and the Redevelopment Agreement will require the redeveloper to pay O&M costs going forward. (NOTE-to confirm- the cost incurred by the Town to create the redevelopment area and plan, and to enter into the Redevelopment Agreement, would be reimbursed to the Town ---together with foreclosure costs---before any allocation of sale proceeds)
- 3) Because the O&M costs going forward will be taken care of by the Redeveloper, we don't think that O&M costs should be paid from any surplus funds (i.e. net sale proceeds over \$18M) Instead, we propose that that the first \$3.33M of surplus funds be split between the USEPA and the Town. (This \$3.33M represents 2/3 of the \$5M already recovered by the NJDEP).
- 4) Any surplus fund beyond this would be shared equally (i.e. 1/3 each to the USEPA, NJDEP, and Town)

We can discuss this in further detail during Thursday's conference call.

From: Mayor Alberto Santos <mayor@kearnynj.org>
Sent: Wednesday, February 5, 2020 12:27 PM
To: Louis Karagias <Louis.Karagias@law.njoag.gov>; Carrera, Lindsay <carrera.lindsay@epa.gov>; Baxter, Pamela <baxter.Pamela@epa.gov>; Oconnell, Kimberly <OConnell.Kim@epa.gov>; Mellott, Deborah <Mellott.Deborah@epa.gov>; Zizila, Frances <Zizila.Frances@epa.gov>; Putnam, Ed <ed.putnam@dep.nj.gov>; kevin.kratina@dep.nj.gov; Haymes, David <David.Haymes@dep.nj.gov>; frank.defeo@dep.nj.gov; O'Neill, Tom <Tom.O'Neill@dep.nj.gov>; James P. Bruno <jbruno@cq-law.com>; susan@mccurrielaw.com
Subject: RE: Syncon Resins Call

If the Town is foregoing all of its accumulated interest, which is substantial and not typically done for past due property owners, we would want to recover more than 15% of a surplus netted out for O&M.

From: Louis Karagias [Louis.Karagias@law.njoag.gov]

Sent: Wednesday, February 05, 2020 11:35 AM

To: Carrera, Lindsay; Baxter, Pamela; Oconnell, Kimberly; Mellott, Deborah; Zizila, Frances; Putnam, Ed; kevin.kratina@dep.nj.gov; Haymes, David; frank.defeo@dep.nj.gov; O'Neill, Tom; jbruno@cq-law.com; susan@mccurrielaw.com; Mayor Alberto Santos

Subject: RE: Syncon Resins Call

All, as discussed during our telephone conference call, attached is DEP's counterproposal.

Louis G. Karagias, DAG
Office of the Attorney General
Environmental Enforcement and
Environmental Justice Section
25 Market Street
P.O. Box 093
7th Floor, West Wing
Trenton, N.J. 08625

Tel. (609) 376-2735
Main No. (609) 376-2740 (Environmental Enforcement)
Fax (609) 341-5030
Email: Louis.Karagias@law.njoag.gov

-----Original Appointment-----

From: Carrera, Lindsay <carrera.lindsay@epa.gov>

Sent: Wednesday, January 29, 2020 12:24 PM

To: Baxter, Pamela; Oconnell, Kimberly; Mellott, Deborah; Zizila, Frances; Putnam, Ed; kevin.kratina@dep.nj.gov; Haymes, David; frank.defeo@dep.nj.gov; Louis Karagias; O'Neill, Tom; jbruno@cq-law.com; susan@mccurrielaw.com; Mayor Alberto Santos

Subject: [EXTERNAL] Syncon Resins Call

When: Thursday, February 13, 2020 10:30 AM-12:30 PM (UTC-05:00) Eastern Time (US & Canada).

Where: R2NY-Rm-2641-16p.ORA-PAO

CALL-IN: +1 315 565 0493
ID: 7960512

To discuss the future of the Syncon Resins Superfund site pending a possible future sale and proposals regarding unreimbursed costs on behalf of EPA, NJDEP, and Town of Kearny.

This meeting will take place via conference call from 290 Broadway, Room 2641.

Attached please see the attendance list from January 29 meeting.

CONFIDENTIALITY NOTICE The information contained in this communication from the Office of the New Jersey Attorney General is privileged and confidential and is intended for the sole use of the persons or entities who are the addressees. If you are not an intended recipient of this e-mail, the dissemination, distribution, copying or use of the information it contains is strictly prohibited. If you have received this communication in error, please immediately contact the Office of the Attorney General at (609) 292-4925 to arrange for the return of this information.

CONFIDENTIALITY NOTICE The information contained in this communication from the Office of the New Jersey Attorney General is privileged and confidential and is intended for the sole use of the persons or entities who are the addressees. If you are not an intended recipient of this e-mail, the dissemination, distribution, copying or use of the information it contains is strictly prohibited. If you have received this communication in

error, please immediately contact the Office of the Attorney General at (609) 292-4925 to arrange for the return of this information.